IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE ESTATE OF GEORGE BURRELL, JR.

TERESA TOWNS,
Appellant,
vs.
KATHLEEN MARIE BUCHANAN,
Respondent.

No. 51231

FILED

NOV 19 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order approving a guardianship commissioner's findings of fact and recommendations in a guardianship property matter. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie Jr., Judge.

Appellant challenges the district court's rulings that George Burrell had testamentary capacity in 2002 to change his will and revoke his trust and that appellant improperly recorded a deed, which transferred property from Burrell to the trust that had been revoked, of which appellant was the beneficiary.

First, appellant argues that the 2002 will that revoked the prior 1999 will and trust was invalid because there was no written order granting Burrell's guardians permission to change the will. While the record shows a lack of a written order, a hearing was held and Burrell was found to have testamentary capacity to execute the 2002 will. Additionally, another hearing was held following Burrell's death in which a written order was entered and the district court again concluded that

Burrell had testamentary capacity in 2002 and that the will was valid. This later hearing and written order corrected any defect arising from the lack of a prior written order.

Next, appellant argues that the district court erred in finding that Burrell had testamentary capacity in 2002 to change his will. This court will affirm the district court's finding of testamentary capacity if it is supported by substantial evidence.[1] Substantial evidence is defined as "evidence that a reasonable mind might accept as adequate to support a conclusion."[2] We conclude that substantial evidence supports the district court's finding of testamentary capacity and therefore affirm the district court on this issue.

Finally, appellant argues that she properly recorded the quitclaim deed that transferred the property to the trust that was revoked by the 2002 will. Based on our conclusion that the trust was revoked, the quitclaim deed was no longer valid to transfer the property, even if it was signed and delivered prior to the revocation of the trust; once a trust is revoked, the property in the trust reverts back to the grantor.[3] As a

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[1]Close v. Flanary, 77 Nev. 87, 93, 360 P.2d 259, 263 (1961).

[2]Bongiovi v. Sullivan, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006) (internal quotation marks and citations omitted).

[3]See Linthicum v. Rudi, 122 Nev. 1452, 1455-56, 148 P.3d 746, 749 (2006) (recognizing that a beneficiary's interest is "subject to complete divestment" during the lifetime of the grantor of a revocable trust); see also Upman v. Clarke, 753 A.2d 4, 11 (Md. Ct. App. 2000) (stating that once a grantor of a revocable trust revokes the trust, the title to property in the trust reverts back to the grantor); Paul v. Arvidson, 123 P.3d 808, 811 (Okla. Civ. App. 2005) (same).

result, the quitclaim deed transferring the property to the trust was no longer valid and the property's distribution was properly handled under the 2002 will. In addition, based on the invalidity of the quitclaim deed and the settlement agreement, signed by appellant, in which she agreed not to transfer any property to the trust without prior court approval, we affirm the district court's order imposing double damages against appellant under NRS 159.315(3).[4]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Teresa Towns
Goldsmith & Guymon, P.C.
Eighth District Court Clerk

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[4]After reviewing appellant's other arguments on appeal, we conclude that they lack merit.

[5]On August 13, 2008, appellant filed a motion to file a reply to respondent's answer. The motion contained appellant's reply arguments. We have considered the arguments in resolving this appeal. As the document has already been filed, we deny as moot appellant's motion.